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OFFICE OF PETITIONS

In re Application of :
Hofmann, et al. :
Application No. 09/445,362 :
Filed: May 15, 2000 :
Attorney Docket No. 50125/008001 :

ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed May 10, 2004.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181".

The above-identified application became abandoned for failure to timely file a reply to the non-final Office action mailed on September 16, 2003. This Office action set a shortened statutory period for reply of three months. No reply having been received, the application became abandoned on December 17, 2003. The Office mailed a Notice of Abandonment on April 28, 2004.

On petition, applicant argues that he did not receive the September 16, 2003 non-final Office action. In support thereof, petitioner has included a copy of an electronic file jacket for the instant application, showing the prosecution history.

To establish non-receipt of an Office action, a petitioner:

must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.¹

In addition, the Manual of Patent Examining Procedure § 711.03(c) also states:

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the non-received Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Here, petitioner has not submitted a copy of a master docket report, showing all the firm's replies docketed for a due date of December 13, 2003.

While the showing of record is not sufficient to withdraw the holding of abandonment, petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m), currently \$810; and (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

¹ MPEP 711.03(c).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo

Cliff Congo
Petitions Attorney
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